

No. 11160 *N. 2436*

United States
Circuit Court of Appeals
For the Ninth Circuit.

BABETTE G. LURIE,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Transcript of the Record

Upon Petition to Review a Decision of the Tax Court
of the United States

FILED

NOV 30 1945

PAUL P. O'BRIEN,
CLERK

No. 11160

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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APPEARANCES:

For Taxpayer:

OSCAR SAMUELS, ESQ.,

TEVIS JACOBS, ESQ.

For Comm'r:

T. M. MATHER, ESQ.

Docket No. 3571

BABETTE G. LURIE,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

DOCKET ENTRIES

1943

Dec. 6—Petition received and filed. Taxpayer notified. Fee paid.

Dec. 6—Request for Circuit hearing in San Francisco, California, filed by taxpayer, 12/10/43 Granted.

Dec. 7—Copy of petition served on General Counsel.

1944

Jan. 12—Answer filed by General Counsel.

Jan. 14—Copy of answer served on taxpayer. San Francisco, California.

1944

Aug. 10—Hearing set Sept. 18, 1944, in San Francisco, California.

Sep. 18—Hearing had before Judge Van Fossan on merits. Consolidated with 3572. Stipulation of facts filed. Briefs due Nov. 2, 1944. Replies November 17, 1944.

Oct. 14—Transcript of hearing 9/18/44 filed.

Oct. 25—Brief filed by General Counsel.

Oct. 26—Brief filed by taxpayer. 10/26/44 Copy served.

Nov. 14—Reply brief filed by taxpayer. Copy served.

1945

Mar. 31—Findings of fact and opinion rendered, Judge Van Fossan. Decision will be entered for the respondent. 4/2/45 Copy served.

Mar. 31—Decision entered. Judge Van Fossan. Div. 9.

Jun. 16—Petition for review by U. S. Circuit Court of Appeals, 9th Circuit, with assignments of error filed by taxpayer.

Jun. 30—Proof of service filed.

Sep. 19—Designation of contents of record filed by taxpayer with proof of service thereon.

Sep. 24—Certified copy of order from Circuit Court of Appeals, 9th Circuit, extending time to October 15, 1945, filed. [1*]

*Page numbering appearing at top of page of original certified Transcript.

The Tax Court of the United States

Docket No. 3571

BABETTE G. LURIE,

Petitioner.

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent,

PETITION

The above named Petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his Notice of Deficiency (San Francisco Division, IRA:90-D-WLS, (C:TS:PD SF:BMG)), dated October 22, 1943, and as a basis of her proceeding alleges as follows:

1. Petitioner is a resident of San Francisco, California, with her office at 333 Montgomery Street, San Francisco, California. The return for the period here involved was filed by Petitioner with the Collector for the First District of California, at San Francisco.

2. The Notice of Deficiency (a copy of which is attached hereto and marked Exhibit "A") was mailed to Petitioner on October 22, 1943.

3. The taxes in controversy are income taxes for the year ending December 31, 1941, and are in the amount of \$1,177.03.

4. The determination of tax set forth in said

Notice of Deficiency is based upon the following error: [2]

(a) A gain of \$3,448.53 from the retirement of preferred income notes of Hilton Hotel Company of California was held to be ordinary income instead of a long-term capital gain.

5. The facts upon which Petitioner relies as a basis of this proceeding are as follows:

(a) During the year 1939 Petitioner and Louis R. Lurie, husband of Petitioner, in equal shares purchased various securities of Hilton Hotel Company of California, including the stock of said corporation, bonds of said corporation, and preferred income notes issued by said corporation. Said preferred income notes were payable out of the income of the corporation as defined in each note so issued. The total amount of the issue was \$203,747.94, and said notes were issued pursuant to a permit of the Division of Corporations of the State of California.

(b) In 1940 Petitioner's husband and the other holders of said series of notes returned said notes to Hilton Hotel Company of California and on the face of said notes was printed the following:

"Notice to Holder: This note may be registered as provided on the back hereof."

and upon the reverse of said notes was printed the following:

"This note may be registered in the holder's name upon a register to be maintained by the Company at its office in San Francisco, Califor-

nia. Such registration shall be noted on this note by the Company, after which no transfer hereof shall be valid unless made on said register and noted on this note. The Company may deem and treat the person in whose name this note is from time to time registered as the absolute owner hereof for the purpose of receiving payments of principal and interest due hereon and for all other purposes.

(Registration)

Notice to Holder: Do not write on this note. Consult [3] the Company for method of transferring registration. Date of Registry In Whose Name Registered: Register, Hilton Hotel Company of California.

By
Authorized Officer.”

Immediately following said change to registered form, said notes, including those owned by Petitioner, were in fact registered in a register maintained by said corporation in its office in San Francisco, California, and the date of such registration (August 6, 1940), the name of Petitioner's husband, and the signature of the authorized officer of said corporation were inscribed on each note.

(c) In 1941 all of said notes were retired and Petitioner and her husband received \$6,897.06 in excess of the cost to them of said notes and one-half thereof, or \$3,448.53, was reported by Petitioner as a long-term capital gain (and the other

one-half of said excess was reported by Petitioner's said husband).

Wherefore, Petitioner prays that this Court may hear the proceeding and determine that there is no deficiency due from the Petitioner for the year ending December 31, 1941.

Dated: San Francisco, California, November 30th, 1943.

OSCAR SAMUELS,

TEVIS JACOBS,

Counsel for Petitioner. [4]

State of California,

City and County of San Francisco—ss.

Babette G. Lurie, being first duly sworn, deposes and says:

That she is the Petitioner named in the foregoing Petition; that she has read said petition and knows the contents thereof; that the same is true of her own knowledge except as to the matters therein stated on information or belief, and as to those matters that she believes it to be true.

BABETTE G. LURIE.

Subscribed and sworn to before me this 30th day of November, 1943.

[Seal] HELEN V. FLANAGAN,
Notary Public in and for the City and County of
San Francisco, State of California.

My commission expires January 24, 1945. [5]

EXHIBIT "A"

SN-IT-1

Treasury Department
Internal Revenue Service
74 New Montgomery Street.
San Francisco 5, California

Oct. 22, 1943

Office of
Internal Revenue Agent
in Charge

San Francisco Division
IRA:90-D-WLS
(C:TS:PD
SF:GMB)

Mrs. Babette G. Lurie,
333 Montgomery Street,
San Francisco, California

Madam:

You are advised that the determination of your income tax liability for the taxable year(s) ended December 31, 1941 discloses a deficiency of \$1,177.03 as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiency mentioned.

Within 90 days (not counting Sunday or a legal holiday in the District of Columbia as the 90th day) from the date of the mailing of this letter, you may file a petition with the Tax Court of the United States for a redetermination of the deficiency.

Should you not desire to file a petition, you are

requested to execute the enclosed form and forward it to the Internal Revenue Agent in Charge, San Francisco, California, for the attention of Conference Section. The signing and filing of this form will expedite the closing of your return(s) by permitting an early assessment of the deficiency, and will prevent the accumulation of interest, since the interest period terminates 30 days after filing the form, or on the date assessment is made, whichever is earlier.

Respectfully,

ROBERT E. HANNEGAN,
Commissioner.

(Signed) By F. M. HARLESS,
Internal Revenue Agent in
Charge.

Enclosures:

Statement.

Form of waiver. [6]

STATEMENT

San Francisco
IRA :90-D-WLS
(C:TS:PD
SF:GMB)

Mrs. Babette G. Lurie,
333 Montgomery Street,
San Francisco, California

Tax Liability for the Taxable Year Ended
December 31, 1941

	Liability	Assessed	Deficiency
Income Tax	\$15,810.38	\$14,633.35	\$1,177.03

In making this determination of your income tax liability, careful consideration has been given to your protest dated July 15, 1943; to the statements made at the conferences held on August 3 and September 22, 1943.

A copy of this letter and statement has been mailed to your representatives, Oscar Samuels and Tevis Jacobs, 333 Montgomery Street, San Francisco, California, in accordance with the authority contained in the power of attorney executed by you and on file in this office.

Adjustments to Net Income

Net income as disclosed by return	\$49,186.29
Unallowable deductions and additional income:	
(a) Gain on retirement of notes	1,724.26
Net income adjusted	<hr/> \$50,910.55

Explanation of Adjustments

(a) You reported a gain of \$3,448.53 from the retirement of preferred income notes of the Hilton Hotel Company of California. This gain was returned as a long-term capital gain, 50% or \$1,724.27 thereof being taken into account in computing taxable income.

The gain in the sum of \$3,448.53 realized upon the retirement of preferred income notes is held to be ordinary income taxable in the full amount thereof. Accordingly, the unreported portion of the gain is added to taxable income.

COMPUTATION OF ALTERNATIVE TAX

(Section 117 (c)—I. R. C.)

Net income	\$50,910.55
Minus: Net long-term capital gain	23,609.48
Ordinary net income	\$27,301.07
Less:	
Personal Exemption (claimed by husband)	None
Balance (surtax net income)	\$27,301.07
Less:	
Earned income credit	1,400.00
Net income subject to normal tax	\$25,901.07
Normal tax at 4 per cent on \$25,901.07	\$ 1,036.04
Surtax on \$27,301.07	7,691.50
Partial tax	\$ 8,727.54
Plus: 30 per cent of net long-term gain	7,082.84
Alternative tax	\$15,810.38

COMPUTATION OF TAX

Net income adjusted	\$50,910.55
Less:	
Personal exemption	None
Balance (surtax net income)	\$50,910.55
Less:	
Earned income credit	1,400.00
Net income subject to normal tax	\$49,510.55
Normal tax at 4% on \$49,510.55	\$ 1,980.42
Surtax on \$50,510.55	19,899.01
Total tax	\$21,879.43
Total alternative tax	\$15,810.38

Correct income tax liability	\$15,810.38
Income tax assessed:	
Original, account No. 327476—First California	14,633.35
	<hr/>
Deficiency of income tax	\$ 1,177.03

[Endorsed]: T.C.U.S. Filed Dec. 6, 1943. [9]

[Title of Tax Court and Cause.]

ANSWER

Comes now the Commissioner of Internal Revenue, respondent above named, by his attorney, J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, and for answer to the petition filed by the above-named petitioner, admits and denies as follows:

1. Admits the allegations contained in paragraph 1 of the petition.

2. Admits the allegations contained in paragraph 2 of the petition.

3. Admits the allegations contained in paragraph 3 of the petition.

4. (a) Denies that the Commissioner erred in the determination of the deficiency, as alleged in subparagraph (a) of paragraph 4 of the petition.

5. (a) Admits that during the year 1939 petitioner and Louis R. Lurie, husband of petitioner, purchased preferred income notes issued by Hilton Hotel Company of California, but denies the

remaining allegations contained in subparagraph (a) of paragraph 5 of the petition.

(b) For lack of information denies the allegations contained in subparagraph (b) of paragraph 5 of the petition.

(c) Admits the allegations contained in subparagraph (c) of paragraph 5 of the petition.

6. Denies generally and specifically each and every allegation in the petition not hereinbefore admitted, qualified, or denied.

Wherefore, it is prayed that the Commissioner's determination be approved and the petitioner's appeal denied.

[Signed] J. P. WENCHEL, TMM,
 Chief Counsel, Bureau of Internal Revenue.

Of Counsel:

B. H. NEBLETT,
 Division Counsel.

T. M. MATHER,
 Attorney, Bureau of Internal Revenue.

TMM/vg 12-30-43.

[Endorsed]: T.C.U.S. Filed Jan. 12, 1944. [11]

The Tax Court of the United States

4 T. C. No. 126

BABETTE G. LURIE,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

LOUIS R. LURIE,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Docket Nos. 3571, 3572

Promulgated: March 31, 1945.

Preferred income notes issued originally without registration, were duly registered in August, 1940, and retired in 1941.

Held, that to qualify under section 117 (f), Revenue Act of 1938, the securities retired must have been in registered form for at least the minimum period of 18 months provided by section 117 (b).

Tevis Jacobs, Esq., for the petitioners.

T. M. Mather, Esq., for the respondent.

The respondent determined a deficiency of \$1,517.34 in the income tax of the petitioner, Louis R. Lurie, for the year 1941, and \$1,177.03 in the income tax of the petitioner, Babette G. Lurie, for the same year.

The sole issue is whether a gain of \$3,448.53 realized by each [12] petitioner upon the retirement of preferred income notes of Hilton Hotel Company of California constituted capital gain or ordinary income.

FINDINGS OF FACT

The facts were stipulated. Insofar as they are material to the issue, they are as follows:

The petitioners, Louis R. Lurie and Babette G. Lurie, are husband and wife and reside in San Francisco, California. They filed their income tax returns for the year 1941 with the collector of internal revenue for the first district of California.

In 1938 the Hilton Hotel Company of California (then known as Huckins-Newcomb Hotel Company), hereinafter called the company, had outstanding various stock, bonds, notes and other obligations. A group of individuals, including the petitioners, acquired all of such securities and obligations. In order to facilitate the handling of them, units were formed, consisting of an equal percentage of all of the securities and obligations. Thereupon, pursuant to permits of the Commissioner of Corporations of the State of California, each member of the group received voting trust certificates, promissory notes and other securities in proportion to the number of units held by him. Included was a series of preferred income notes in the total amount of \$203,747.94, issued pursuant to a permit of the Commissioner of Corporations. Each note was a printed document containing no reference to registration.

At the time of the original issuance of the notes, the petitioners jointly owned approximately one-third of the units and therefore owned one-third of the outstanding securities, including one-third of the total [13] amount of the preferred income notes. Shortly thereafter, late in the year 1938 and early in 1939, the petitioners acquired additional units and included in each were preferred income notes which were acquired at less than face value and which are involved herein. After the acquisition of these additional units, the petitioners owned slightly in excess of forty per cent of the units.

The voting trustees in the voting trust certificates included in the units consisted of the petitioner Louis R. Lurie, C. N. Hilton and Don B. Burger, the last named being an owner of a small number of voting trust certificates and prior preferred income notes and an employee of C. N. Hilton. The remaining voting trust certificates and prior preferred income notes (and other securities of the corporation in the same proportion) were owned by C. N. Hilton and various associates of his who at all times controlled the company and whose attorney was employed as attorney for the company. The directors of the company consisted of Louis R. Lurie, his auditor J. A. Kurzman, C. N. Hilton, Don B. Burger and one Packey Dee of Chicago.

In the application for the permit to issue the promissory notes, it is recited: "Said new promissory notes are to be registered and applicant hereby designates itself to act as the registrar thereof." Annexed to the application was a printed form of

a preferred income note and there was an additional printed page entitled "Registration," on which was set forth a form for registering the notes. When the notes were finally printed and issued, the page entitled "Registration" was omitted. In August of 1940, the company requested of the holders of the notes that they be returned to it. [14]

The notes were thereupon returned to the company and on the face of each of the notes was printed the following:

"Notice to Holder: This not may be registered as provided on the back hereof."

and on the back of each was printed the following:

"This note may be registered in the holder's name upon a register to be maintained by the Company at its office in San Francisco, California. Such registration shall be noted on this note by the Company, after which no transfer hereof shall be valid unless made on said register and noted on this note. The Company may deem and treat the person in whose name this note is from time to time registered as the absolute owner hereof for the purpose of receiving payments of principal and interest due hereon and for all other purposes.

(Registration)

Notice to Holder: Do not write on this note. Consult the Company for method of transferring registration.

Date of Registry: In Whose Name Registered:
Register Hilton Hotel Company of California.

By
Authorized Officer."

On August 6, 1940, the petitioners returned to the company the notes involved herein and had them registered in the name of Louis R. Lurie, one of the petitioners. A photostatic copy of one of the original notes, after registration, is in the record and reference is here made to it.

For the year 1940 the taxpayers returned the profit on the principal payments made on account of the notes in that year after registration as a capital gain and the Internal Revenue Department held it to be ordinary income. The petitioners acceded to the contention of the department on advice of counsel that, regardless of whether or not the notes were in registered form, the notes were not retired in the [15] year 1940 as required by section 117 (f) of the Revenue Act in order to fall within its terms.

All of the notes in question were retired in 1941, more than two years after the acquisition of them by the petitioners and less than 18 months after the date that the notes were returned to the company and registered as aforesaid, at a profit to each of the petitioners in the amount of \$3,448.53. This profit was returned by each of the taxpayers as a capital gain. The respondent determined that such profit was ordinary income.

OPINION

Van Fossan, Judge: There is, and can be, no question raised as to the fact that the notes here in question were capital assets under the statutory definition of section 117 (a) (1). The issue arises

solely from the fact that the notes were not in registered form when originally issued, formal registration or registered endorsement on the backs of the notes not being perfected until August 6, 1940, less than 18 months before retirement.

The problem being one of statutory interpretation, we look first to the legislative history. Antedating section 117 (f) were the cases of Henry P. Werner, 15 B.T.A. 482, and John H. Watson, Jr., 27 B.T.A. 463. In the Werner case the Board of Tax Appeals held that gain realized when certain bonds were retired and called prior to maturity was a gain on the "sale or exchange" of a capital asset within the meaning of section 206 of the Revenue Act of 1921, reversing the practice of the Bureau of Internal Revenue as laid down in I. T. 1637. After the promulgation of the Werner case, the Bureau, by I. T. 2488, adopted the doctrine of that case. [16]

In John H. Watson, Jr., *supra*, we re-examined the question under an identical statutory provision of the Revenue Act of 1928 and on such reconsideration reversed the ruling of the Werner case and held that the payment of an amount specified in a bond, either at maturity or pursuant to an authorized call prior to maturity, is not a "sale or exchange" of such bond under section 101 (c) (2) of the Revenue Act of 1928. We specifically disapproved I. T. 2488. See *Fairbanks v. United States*, 306 U. S. 436.

Thereafter Congress, in the Revenue Act of 1934, embraced the holding of the Werner case and

adopted section 117 (f)¹ which has persisted in subsequent acts and the Internal Revenue Code.

Addressing ourselves to the specific phase of the question before us, we may note that we have examined the Congressional reports without gleaning any help in our problem.

Petitioners make two contentions, (1) that the notes were in registered form when retired and that this is sufficient compliance with the statute, and (2) that the notes were capital assets, held for more than two years and, therefore, on retirement, profit constituted long-term capital gain regardless of the fact that they were not in registered form for the statutory period. Respondent contends that when properly read section 117 (f) requires that securities be in [17] registered form at the time of issuance and subsequent registration is insufficient. He argues, alternatively, that since registration occurred in August, 1940, and retirement in 1941, petitioners did not hold the notes in registered form for the period of 18 months required by section 117 (b)².

¹Sec. 117. Capital Gains and Losses.

(f) Retirement of Bonds, Etc.—For the purposes of this title, amounts received by the holder upon the retirement of bonds, debentures, notes, or certificates or other evidences of indebtedness issued by any corporation (including those issued by a government or political subdivision thereof), with interest coupons or in registered form, shall be considered as amounts received in exchange therefor.

²(b) Percentage Taken Into Account.—In the case of a taxpayer other than a corporation, only the following percentages of the gain or loss rec-

As to petitioners' first contention that if the notes were in registered form at the time of retirement the statute was satisfied, we have not the slightest doubt that this was not the Congressional intent. Such a last-minute registration just before retirement, even after the call for retirement has been issued, would permit the holders of notes or other securities to determine for themselves, in accord with their individual advantage, the tax consequences that would flow from retirement without regard for uniformity of treatment or the interests of the Government. The suggested interpretation seems contrary to the whole basic concept of section 117 (f).

The second contention is equally untenable. They argue that the notes were capital assets, held for more than two years, and that therefore it is immaterial that they were not in registered form for the minimum period provided by section 117 (b). The fault of this [18] argument is that in the absence of section 117 (f) the ruling of this Court in *John H. Watson, Jr.*, and cases to the same effect, would be operative and it would, of necessity, be held that albeit the notes were capital assets, there

ognized upon the sale or exchange of a capital asset shall be taken into account in computing net income:

100 per centum if the capital asset has been held for not more than 18 months;

66 2/3 per centum if the capital asset has been held for more than 18 months but not for more than 24 months;

50 per centum if the capital asset has been held for more than 24 months.

was no sale or exchange of such notes on retirement. Section 117 (f) superseded the above ruling but it did not invalidate or reverse the principles underlying, or the logic of, that decision. Thus it is, if petitioners are to prevail, the case must be held to come within the provisions of section 117 (f).

Although we find ourselves in disagreement with both the petitioners' contentions, we do not, under the facts, find it necessary in these cases to approve respondent's main contention that the notes must be in registered form from the time of issuance and that no subsequent registration can convert unregistered notes into notes in registered form. Rather, we find in respondent's alternative argument sufficient basis for our ruling that since petitioners' notes were not in registered form for the minimum period fixed by section 117 (b), i.e., 18 months, they cannot be held to satisfy section 117 (f).

In our opinion there can be no doubt that, taking all the provisions of section 117 into consideration and having due regard for the purposes of the section, to come within section 117 (f) the notes must be, at the very least, in registered form for the minimum period provided by section 117 (b). This period is 18 months. Since petitioners' notes were in registered form for less than such period before retirement, they do not qualify under section 117 (f).

Reviewed by the Court.

Decisions will be entered for the respondent.

Kern, J., concurs only in the result.

The Tax Court of the United States
Washington

Docket No. 3571

BABETTE G. LURIE,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DECISION

Pursuant to the determination of the Court, as set forth in its Findings of Fact and Opinion promulgated March 31, 1945, it is

Ordered and Decided: That there is a deficiency in income tax for the calendar year 1941 in the amount of \$1,177.03.

[Seal] (Signed) ERNEST H. VAN FOSSAN
Judge.

Entered Mar. 31, 1945. [20]

[Title of Tax Court and Cause.]

PETITION FOR REVIEW BY THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

To the Honorable the Judges of the United States
Circuit Court of Appeals for the Ninth Circuit:

Babette G. Lurie, your petitioner, respectfully
petitions this Honorable Court to review the decision

of The Tax Court of the United States entered in the above entitled cause on the 31st day of March, 1945, and determining a deficiency in income tax for the calendar year 1941 in the amount of \$1177.03.

I.

Jurisdiction

Your petitioner is a resident of the City and County of San Francisco, State of California. [21]

The return of income taxes for the period here involved was filed with the Collector of Internal Revenue, 1st District, in the City and County of San Francisco, State of California, which is located within the jurisdiction of the Circuit Court of Appeals for the Ninth Judicial Circuit.

Jurisdiction of this court to review the afore-said decision of The Tax Court of the United States is founded on Internal Revenue Code Sections 1141 (a) (b) (1).

II.

Nature of Controversy

The petitioner, on the 6th day of December, 1943, filed with The Tax Court of the United States a petition requesting a redetermination of a deficiency set forth by the Commissioner of Internal Revenue in a notice of deficiency (San Francisco Division, IRA:90-D-WLS (C:TS:PD SF:GMB)), dated October 22, 1943, in the amount of \$1177.03 in income taxes for the calendar year 1941.

The issue to be determined by The Tax Court of the United States was as follows:

When preferred income notes not in registered form of a series issued by a corporation are purchased by an individual taxpayer at less than face value and all of the outstanding notes are thereafter returned to the corporation to permit of a form of registration being printed on each and [22] the registration thereof, is the profit on retirement of said notes a long term capital gain under the law as it existed in 1941 when the retirement occurred more than two years after acquisition of said notes by the taxpayer although less than 18 months after registration?

The case was heard before the Honorable Ernest H. Van Fossan at San Francisco, California, on September 18, 1944.

III.

Declaration of the Court in Which Review Is Sought

Said petitioner being aggrieved by the findings of fact and opinion promulgated by The Tax Court of the United States on March 31, 1945, in the above entitled matter, and by its decision entered pursuant thereto, desires to obtain a review thereof by the United States Circuit Court of Appeals for the Ninth Circuit, petitioner being a resident of the City and County of San Francisco, State of California, and having filed her income tax return for the calendar year 1941 with the Collector of Internal Revenue at San Francisco, California.

IV.

ASSIGNMENTS OF ERROR

The petitioner assigns as error the following:

1. The determination by The Tax Court of the United States that petitioner was not entitled to return the [23] profit on the retirement of certain preferred income notes as a long term capital gain.

2. The determination by said Court that said notes were required to be in registered form for a period of at least 18 months in order for the retirement to constitute an exchange under Section 117 (f) of the Internal Revenue Code.

OSCAR SAMUELS

TEVIS JACOBS

Attorneys for Petitioner.

[Endorsed]: T.C.U.S. Filed June 16, 1945. [24]

[Title of Tax Court and Cause.]

NOTICE OF FILING PETITION FOR
REVIEW

To the Chief Counsel of the Bureau of Internal Revenue, Washington, D. C.

Please Take Notice that the petitioner, on the 16th day of June, 1945, filed with the Clerk of The Tax Court of the United States, her petition for a review by the United States Circuit Court of Appeals for the Ninth Circuit of the decision of The Tax Court

of the United States heretofore rendered in the above entitled cause.

A copy of the petition for review as filed is hereto attached and served upon you.

San Francisco, California

June 15, 1945.

/s/ OSCAR SAMUELS

/s/ TEVIS JACOBS

Attorneys for Petitioner [25]

Receipt of a Copy of the foregoing Notice and the attached Petition is hereby acknowledged this 18th day of June, 1945.

/s/ J. P. WENCHEL (CAR)

Chief Counsel

Bureau of Internal Revenue.

[Endorsed]: T.C.U.S. Filed June 30, 1945. [26]

[Title of Tax Court and Cause—Nos. 3571-3572.]

STIPULATION OF FACTS

It Is Hereby Stipulated by and between the parties hereto as follows:

1. Taxpayers Louis R. Lurie and Babette G. Lurie are husband and wife, and each filed a separate return for the year ending December 31, 1941.

2. In 1938 the Hilton Hotel Company of California, then known as Huckins-Newcomb Hotel Company, had outstanding various stock, bonds,

notes and other obligations. A group of individuals, including the taxpayers, acquired all of said securities and obligations. [27] In order to facilitate the handling of them, units were formed, consisting of an equal percentage of all said securities and obligations. Thereupon, pursuant to permits of the Commissioner of Corporations of the State of California, each member of the group received voting trust certificates, promissory notes and other securities in proportion to the number of units held by him. Included was a series of preferred income notes in the total amount of \$203,747.94, issued pursuant to a permit of the Commissioner of Corporations. Each of said notes was a printed document, a typewritten copy of which is annexed hereto and marked Exhibit 1.

3. At the time of the original issuance of said notes, taxpayers jointly owned approximately one-third of the units and therefore owned one-third of the outstanding securities including one-third of the total amount of said preferred income notes. Shortly thereafter, in the year 1938 and early in 1939, taxpayers acquired additional units and included in each were preferred income notes which notes were acquired at less than face value and which are the subject of the instant case. After the acquisition of these additional units, the taxpayers owned slightly in excess of forty per cent of said units. The voting trustees in the voting trust certificates included in said units consisted of taxpayer Louis R. Lurie, C. N. Hilton and Don B. Burger, the latter being an owner of a small number of voting

trust certificates and prior preferred income notes and an employee of C. N. Hilton. The remaining voting trust certificate and prior preferred income notes (and other securities of the corporation in the same proportion) were owned by C. N. Hilton and various associates of his who at all times controlled the corporation and whose attorney was employed as attorney for said corporation. The [28] directors of said corporation consisted of Louis R. Lurie, his auditor J. A. Kurzman, C. N. Hilton, Don B. Burger and one Packey Dee of Chicago.

4. In the application for the permit to issue said promissory notes, it is recited: "Said new promissory notes are to be registered and applicant hereby designates itself to act as the registrar thereof." Annexed to said application was a printed form of a preferred income note as in Exhibit 1 hereof, and there was an additional printed page entitled "Registration", on which was set forth a form for registering said notes. When said notes were finally printed and issued, they were in the form of Exhibit 1. In August of 1940, the Company requested of the holders of said notes that they be returned to it. The notes were thereupon returned to the Company and on the face of each of said notes was printed the following:

"Notice of Holder: This note may be registered as provided on the back hereof."

and on the back of each was printed the following:

"This note may be registered in the holder's name upon a register to be maintained by the Company

at its office in San Francisco, California. Such registration shall be noted on this note by the Company, after which no transfer hereof shall be valid unless made on said register and noted on this note. The Company may deem and treat the person in whose name this note is from time to time registered as the absolute owner hereof for the purpose of receiving payments of principal and interest due hereon and for all other purposes.

(Registration)

Notice to Holder: Do not write on this note. Consult the Company for method of transferring registration.

Date of Registry.

.....

In Whose Name Registered.

.....

Register Hilton Hotel Company of California

By

Authorized Officer" [29]

5. On August 6, 1940, the taxpayers returned to said corporation the notes involved in this action and had them registered in the name of Louis R. Lurie, one of the taxpayers herein. A photostatic copy of one of said notes is annexed hereto and marked Exhibit 2.

6. For the year 1940 the taxpayers returned the profit on the principal payments made on account of

said notes in said year after registration as a capital gain and the Internal Revenue Department held the same to be ordinary income. The taxpayers acceded to the contention of the department on advice of counsel that, regardless of whether or not the notes were in registered form, said notes were not retired in the year 1940 as required by section 117 (f) of the Revenue Act in order to fall within its terms.

7. All of the notes in question were retired in 1941, more than two years after the acquisition of them by the taxpayers and less than eighteen months after the date that said notes were returned to the Company and registered as aforesaid, at a profit in the instance of each of the taxpayers in the amount of \$3,448.43. This profit was returned by each of the taxpayers as a capital gain and the respondent contends that said profit is ordinary income.

Dated: September 14, 1944.

OSCAR SAMUELS

TEVIS JACOBS

Attorneys for Petitioners

J. P. WENCHEL (TMM)

Chief Counsel

Bureau of Internal Revenue

Attorneys for Respondent

EXHIBIT 1

Hilton Hotel Company of California

PREFERRED INCOME NOTE

No..... \$......

Know All Men by These Presents, That Hilton Hotel Company of California, a corporation duly organized and existing under and by virtue of the law of the State of California, hereinafter referred to as the "Company", acknowledges itself to owe and for value received promises to pay to.....
.....or order, the principal sum of.....
.....Dollars (\$.....) on or before November 1, 1952, with interest on said principal sum from the date hereof until maturity, at the rate of six per cent (6%) per annum, payable on November 1, 1938, and thereafter semiannually on the first days of May and November of each year until maturity; provided, however, that such interest shall be payable only out of the available cash receipts of the Company as hereinafter defined, for the operating period preceding each semiannual interest payment date, if and to the extent that such available cash receipts shall be sufficient for such payment.

If interest so paid shall be less than at the rate of six per cent (6%) per annum on this note, the difference between the amount equal to interest for any semiannual period immediately preceding any semiannual interest payment date at the rate of six per cent (6%) per annum and the amount of interest paid for such semiannual period, shall accumulate but without interest on such accumulated in-

terest, until from and after November 1, 1952. In the event that available cash receipts for any operating period immediately preceding any semiannual interest payment date shall not be sufficient to pay interest at the rate of six per cent (6%) per annum for such period, such available cash receipts as are available for such period shall be distributed proportionately to the holders of notes of the series of which this note is one. In the event available cash receipts for any operating period are more than sufficient to pay current interest on said notes, together with all accumulated interest thereon, if any, the Company covenants to apply the excess of such available cash receipts, on the next interest payment date, toward the payment of the principal of said notes. The principal of and accumulated interest on this note shall, after November 1, 1952, bear interest unconditionally at the rate of six per cent (6%) per annum until paid. Interest shall not be paid on accumulated interest until the maturity of this note and then only from and after such maturity.

All payments of principal and interest shall be paid in lawful money of the United States of America at the office of the Company, in the City and County of San Francisco, State of California, and shall be made proportionately to all holders of notes of this series.

This note is one of a series of notes of the Company known as "Hilton Hotel Company of California Preferred Income Notes", limited in the aggregate to the principal sum of Two Hundred Three

Thousand Seven Hundred Forty-seven and 94/100 Dollars (\$203,747.94). [31]

The term "operating period" as used in this note is defined to mean each six (6) months period ending September 30 and March 31 of each year beginning with the six (6) months period ending September 30, 1938. The term "available cash receipts" as used in this note is hereby defined to mean the gross cash receipts of the Company from all sources received during each operating period less, for such operating period, (a) all of the Company's operating expenses, which term shall mean and embrace all costs, charges, outlays and payments made in connection with or for materials, supplies, merchandise, advertising, repairs, ordinary and current replacements, services, salaries, wages and (except as to undertakings secured by the New First Deed of Trust, the New First Chattel Mortgage, the New Second Deed of Trust, the New Second Chattel Mortgage and by that certain Second Supplemental Indenture, dated as of January 1, 1938, executed by the Company and Crocker First National Bank of San Francisco, and certain bondholders, and recorded on June 17, 1938 in Volume 3291 of Official Records at page 331, in the office of the Recorder of the City and County of San Francisco, State of California, said New First Deed of Trust, said New First Chattel Mortgage, said New Second Deed of Trust and said New Second Chattel Mortgage being described in said Second Supplemental Indenture) interest upon and principal of its obligations heretofore or hereafter contracted in good faith in pursuit of the Com-

pany's corporate purposes (except principal and interest on the notes of the series of which this is one), not including, however, any indebtedness to the Company's stockholders which existed on May 1, 1932, or any renewal of such indebtedness; (b) disbursements for necessary improvements and alterations to the property of the Company, ordinarily chargeable to capital, not exceeding in the aggregate Twelve Thousand Dollars (\$12,000.00) per annum, provided such disbursements have been made during the twelve (12) month period ending with the last day of the particular operating period and have not been previously deducted for the purpose of ascertaining available cash receipts, and provided further that any amounts in excess thereof may be so deducted if consented thereto in writing by the Beneficiary under said New First Deed of Trust or the Beneficiary under said New Second Deed of Trust or the holders or registered owners of not less than eighty per cent (80%) of the aggregate principal amount of the then outstanding "Huckins-Newcomb Hotel Company 5½% Bonds", dated May 1, 1932; (c) one-half of the Company's taxes payable for the current year, including ad valorem, income, profit, capital stock, license and all governmental charges, taxes and impositions to which the Company, its property or business may be subject; (d) all interest and principal and other payments and outlays required to be made by the terms of said New First Deed of Trust and said New First Chattel Mortgage; (e) all interest and principal and other payments and outlays required to be made by the terms

of said New Second Deed of Trust and said New Second Chattel Mortgage; (f) any and all other items, whether or not covered by the preceding clauses (a) to (e), the deduction of which in the ascertainment of available cash receipts is authorized and required by any order or regulations of any body, board, commission or governmental agency or others having jurisdiction, nor or at any time hereafter in effect, excluding, however, any deduction for or on account of depreciation of any property of the Company; and (g) provided, and in contemplation of the possibility and advisability of so doing, in event the Company shall upon previous approval of the Trustee under said Second Supplemental Indenture as hereinafter stated, hereafter contract for the erection and equipment of any addition to or alteration of its hotel structure situate upon the land described [32] in said New First Deed of Trust to specially accomodate any intending lessee, lessees or special group or class of patrons, and to be paid for with and from, solely, the rents, income, profits and proceeds of the use and occupancy of all or any part of such improvements, or contract, with like approval, for the installation of or change in equipment in or of such hotel to be paid for by, with and from the earnings and/or savings effected thereby, then the amount of income specially derived from or in connection with such addition, alteration and/or equipment and such earnings and/or savings effected by any such installation or change in equipment and required by such contract or contracts to be applied to and upon pay-

ment therefor, may also be deducted from gross cash receipts in the ascertainment of the amount of available cash receipts for interest as aforesaid; provided, further, however, that the effectiveness of the foregoing proviso is conditioned that the Company shall, before entering into any such contract, submit the same to and secure the approval thereof, in writing, by said Trustee; and (h) provided further that in the event that the Company's gross cash receipts during any operating period are not sufficient in amount to cover the items deductible therefrom, as herein provided, for the purpose of ascertaining available cash receipts for such operating period, the amount of such deficiency shall be carried over for the purpose of computing available cash receipts of successive operating periods until the full amount of such deficiency has been charged off against gross cash receipts thereafter received.

If action be instituted on this note, the Company promises to pay such sum as the Court may fix as attorney's fees. No action or proceeding shall be instituted on or in regard to this note except with the written consent of the holders of two-thirds ($\frac{2}{3}$) or more in principal amount of the notes of this series then outstanding, and then only for the proportionate benefit of the holders of all of the notes of the series of which this note is one; and by acceptance of this note, the holder hereof assents to the foregoing and all of the other terms and provisions hereof.

In Witness Whereof, the Company has caused this note to be signed by its President or Vice President and its corporate seal to be hereunto affixed, and to be attested by its Secretary or an Assistant Secretary, as of the 1st day of July, 1938.

HILTON HOTEL COMPANY
OF CALIFORNIA

By.....

Its.....President

Attest:

.....

Its.....Secretary

EXHIBIT 2

“Notice to Holder: This note may be registered as provided on the back hereof.”

Hilton Hotel Company of California

PREFERRED INCOME NOTE

No. 17

\$3,395.80

Know All Men by These Presents, That Hilton Hotel Company of California, a corporation duly organized and existing under and by virtue of the laws of the State of California, hereinafter referred to as the “Company”, acknowledges itself to owe and for value received promises to pay to J. W. Drown or order, the principal sum of Three Thousand Three Hundred Ninety-five and 80/100ths Dollars (\$3,395.80) on or before November 1, 1952, with interest on said principal sum from the date

hereof until maturity, at the rate of six per cent (6%) per annum, payable on November 1, 1938, and thereafter semiannually on the first days of May and November of each year until maturity; provided, however, that such interest shall be payable only out of the available cash receipts of the Company as hereinafter defined, for the operating period preceding each semiannual interest payment date, if and to the extent that such available cash receipts shall be sufficient for such payment.

If interest so paid shall be less than at the rate of six per cent (6%) per annum on this note, the difference between the amount equal to interest for any semiannual period immediately preceding any semiannual interest payment date at the rate of six per cent (6%) per annum and the amount of interest paid for such semiannual period, shall accumulate but without interest on such accumulated interest, until from and after November 1, 1952. In the event that available cash receipts for any operating period immediately preceding any semiannual interest payment date shall not be sufficient to pay interest at the rate of six per cent (6%) per annum for such period, such available cash receipts as are available for such period shall be distributed proportionately to the holders of notes of the series of which this note is one. In the event available cash receipts for any operating period are more than sufficient to pay current interest on said notes, together with all accumulated interest thereon, if any, the Company covenants to apply the excess of such available cash receipts, on the next interest payment

date, toward the payment of the principal of said notes. The principal of and accumulated interest on this note shall, after November 1, 1952, bear interest unconditionally at the rate of six per cent (6%) per annum until paid. Interest shall not be paid on accumulated interest until the maturity of this note and then only from and after such maturity.

All payments of principal and interest shall be paid in lawful money of the United States of America at the office of the Company, in the City and County of San Francisco, State of California, and shall be made proportionately to all holders of notes of this series.

This note is one of a series of notes of the Company known as "Hilton Hotel Company of California Preferred Income Notes", limited in the aggregate to the principal sum of Two Hundred Three Thousand Seven Hundred Forty-seven and 94/100ths Dollars (\$203,747.94).

The term "operating period" as used in this note is defined to mean each six (6) months period ending September 30 and March 31 of each year beginning with the six (6) months period ending September 30, 1938. The term "available cash receipts" as used in this note is hereby defined to mean the gross cash receipts of the Company from all sources received during each operating period less, for such operating period, (a) all of the Company's operating expenses, which term shall mean and embrace all costs, charges, outlays and payments made in [34] connection with or for materials, supplies, merchan-

dise, advertising, repairs, ordinary and current replacements, services, salaries, wages and (except as to undertakings secured by the New First Deed of Trust, the New First Chattel Mortgage, the New Second Deed of Trust, the New Second Chattel Mortgage and by that certain Second Supplemental Indenture, dated as of January 1, 1938, executed by the Company and Crocker First National Bank of San Francisco, and certain bondholders, and recorded on June 17, 1938 in Volume 3291 of Official Records at page 331, in the office of the Recorder of the City and County of San Francisco, State of California, said New First Deed of Trust, said New First Chattel Mortgage, said New Second Deed of Trust and said New Second Chattel Mortgage being described in said Second Supplemental Indenture) interest upon and principal of its obligations heretofore or hereafter contracted in good faith in pursuit of the Company's corporate purposes (except principal and interest on the notes of the series of which this is one), not including, however, any indebtedness to the Company's stockholders which existed on May 1, 1932, or any renewal of such indebtedness; (b) disbursements for necessary improvements and alterations to the property of the Company, ordinarily chargeable to capital, not exceeding in the aggregate Twelve Thousand Dollars (\$12,000.00) per annum, provided such disbursements have been made during the twelve (12) month period ending with the last day of the particular operating period and have not been previously deducted for the purpose of ascertaining available

cash receipts, and provided further that any amounts in excess thereof may be so deducted if consented thereto in writing by the Beneficiary under said New First Deed of Trust or the Beneficiary under said New Second Deed of Trust or the holders or registered owners of not less than eighty per cent (80%) of the aggregate principal amount of the then outstanding "Huckins-Newcomb Hotel Company 5½% Bonds", dated May 1, 1932; (c) one-half of the Company's taxes payable for the current year, including ad valorem, income, profit, capital stock, license and all governmental charges, taxes and impositions to which the Company, its property or business may be subject; (d) all interest and principal and other payments and outlays required to be made by the terms of said New First Deed of Trust and said New First Chattel Mortgage; (e) all interest and principal and other payments and outlays required to be made by the terms of said New Second Deed of Trust and said New Second Chattel Mortgage; (f) any, and all other items whether or not covered by the preceding clauses (a) to (e), the deduction of which in the ascertainment of available cash receipts is authorized and required by any order or regulations of any body, board, commission or governmental agency or others having jurisdiction, now or at any time hereafter in effect, excluding, however, any deduction for or on account of depreciation of any property of the Company; and (g) provided, and in contemplation of the possibility and advisability of so doing, in event the Company shall upon previous approval of the

Trustee under said Second Supplemental Indenture as hereinafter stated, hereafter contract for the erection and equipment of any addition to or alteration of its hotel structure situate upon the land described in said New First Deed of Trust to specially accommodate any intending lessee, lessees or special group or class of patrons, and to be paid for with and from, solely, the rents, income, profits and proceeds of the use and occupancy of all or any part of such improvements, or contract, with like approval, for the installation of or change in equipment in or of such hotel to be paid for by, with and from the earnings and/or savings effected thereby, then the amount of income specially derived from or in connection with such addition, alteration and/or equipment and such earnings and/or savings effected by any such installation or change in equipment and required by such contract or contracts to be applied to and upon payment therefor, may also be deducted from gross cash receipts in the ascertainment of the amount of available cash receipts for interest as aforesaid; provided, further, however, that the effectiveness of the foregoing proviso is conditioned that the Company shall, before entering into any such contract, submit the same to and secure the approval thereof, in writing, by said Trustee; and (h) provided further that in the event that the Company's gross cash receipts during any operating period are not sufficient in amount to cover the items deductible therefrom, as herein provided, for the purpose of ascertaining available cash receipts for such operating period, the amount of such deficiency

shall be carried over for the purpose of [35] computing available cash receipts of successive operating periods until the full amount of such deficiency has been charged off against gross cash receipts thereafter received.

If action be instituted on this note, the Company promises to pay such sum as the Court may fix as attorney's fees. No action or proceeding shall be instituted on or in regard to this note except with the written consent of the holders of two-thirds ($2/3$) or more in principal amount of the notes of this series then outstanding, and then only for the proportionate benefit of the holders of all of the notes of the series of which this note is one; and by acceptance of this note, the holder hereof assents to the foregoing and all of the other terms and provisions hereof.

In Witness Whereof, the Company has caused this note to be signed by its President or Vice President and its corporate seal to be hereto affixed, and to be attested by its Secretary or an Assistant Secretary, as of the 1st day of July, 1938.

HILTON HOTEL COMPANY
OF CALIFORNIA,

By C. N. HILTON,
Its President.

Attest:

J. R. LING
Its Assistant Secretary. [36]

RECORD OF PAYMENTS

Date	Principal	Interest	Total
September 10, 1938	459.25	40.75	\$500.00
March, 1939	411.41	88.59	500.00
April 5, 1939	489.06	10.94	500.00
June 16, 1939	475.91	24.09	500.00
July 12, 1939	493.24	6.76	500.00
Sept. 4, 1940	427.28	72.72	500.00
April 7, 1941	333.34	19.30	352.64

March 17, 1939.

For value received I hereby assign my right and interest in this note to Louis R. Lurie—

M. DROWN

“This note may be registered in the holder’s name upon a register to be maintained by the Company at its office in San Francisco, California. Such registration shall be noted on this note by the Company, after which no transfer hereof shall be valid unless made on said register and noted on this note. The Company may deem and treat the person in whose name this note is from time to time registered as the absolute owner hereof for the purpose of receiving payments of principal and interest due hereon and for all other purposes.

(Registration)

Notice to Holder: Do not write on this note. Consult the Company for method of transferring registration.

Date of Registry August 6 1940

In Whose Name Registered Louis R. Lurie
Register Hilton Hotel Company of California.

By J. R. LING

Authorized Officer."

[Endorsed]: T.C.U.S. Filed Sept. 18, 1944. [37]

In the United States Circuit Court of Appeals for
the Ninth Circuit

No. 3571

BABETTE G. LURIE

Petitioner

vs.

COMMISSIONER OF INTERNAL REVENUE
Respondent.

DESIGNATION OF CONTENTS OF RECORD
ON REVIEW

To the Clerk of the Tax Court of the United States:

Now comes Babette G. Lurie, the petitioner on review herein, by and through her attorneys, Oscar Samuels and Tevis Jacobs, and for the purpose of the review which she, the said petitioner, has heretofore taken to the United States Circuit Court of Appeals for the Ninth Circuit, hereby designates for inclusion in the record on review, the following:

1. Docket entries of the proceedings before The Tax Court of the United States.

2. Pleadings before The Tax Court of the United States as follows: (a) petition; and (b) answer.

3. Findings of fact and opinion promulgated by The Tax Court of the United States on March 31, 1945. [38]

4. Decision of The Tax Court of the United States entered on the 31st day of March, 1945.

5. Petition for review.

6. Notice of filing petition for review and acknowledgment of service of said notice.

7. Stipulation of facts.

8. This designation of contents of the record on review.

Dated: August 20 1945.

OSCAR SAMUELS

TEVIS JACOBS

Attorneys for petitioner

Service of the foregoing designation of contents of record on review is hereby admitted this 31 day of August 1945.

SAMUEL O. CLARK Jr.

Attorney for respondent.

[Endorsed]: T.C.U.S. Filed Sept. 19, 1945. [39]

The Tax Court of the United States
Washington

Docket No. 3571

BABETTE G. LURIE

Petitioner

vs.

COMMISSIONER OF INTERNAL REVENUE
Respondent

CERTIFICATE

I, B. D. Gamble, clerk of The Tax Court of the United States do hereby certify that the foregoing pages, 1 to 39, inclusive, contain and are a true copy of the transcript of record, papers, and proceedings on file and of record in my office as called for by the Praecipe in the appeal (or appeals) as above numbered and entitled.

In testimony whereof, I hereunto set my hand and affix the seal of The Tax Court of the United States, at Washington, in the District of Columbia, this 26th day of Sept. 1945.

[Seal]

B. D. GAMBLE

Clerk, The Tax Court of the
United States.

[Endorsed]: No. 11160. United States Circuit Court of Appeals for the Ninth Circuit. Babette G. Lurie, Petitioner, vs. Commissioner of Internal Revenue, Respondent. Transcript of Record. Upon Petition to Review a Decision of The Tax Court of the United States.

Filed October 15, 1945.

PAUL P. O'BRIEN

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

In the United States Circuit Court of Appeals for
the Ninth Circuit

Case No. 11160

BABETTE G. LURIE

Appellant

vs.

COMMISSIONER OF INTERNAL REVENUE
Respondent

STATEMENT OF POINTS ON WHICH AP-
PELLANT INTENDS TO RELY ON
APPEAL AND DESIGNATION OF PARTS
OF RECORD WHICH APPELLANT BE-
LIEVES NECESSARY FOR CONSIDERA-
TION THEREOF

I.

Points on which appellant intends to rely on
appeal.

The appellant does hereby adopt the assignments of error set forth in the petition for review filed with the Clerk of The Tax Court of the United States on the 16th day of June, 1945, as the statement of points on which appellant intends to rely on appeal.

II.

Designation of parts of record which appellant believes necessary for consideration thereof.

For consideration of the points on which appellant intends to rely on appeal the entire record as certified to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit by the Clerk of The Tax Court of the United States is designated as necessary and to be printed.

Dated October 19, 1945.

OSCAR SAMUELS

TEVIS JACOBS

Attorneys for Appellant

Service of the foregoing is hereby admitted this 22nd day of October, 1945.

SAMUEL O. CLARK, Jr.,

Assistant Attorney General,

Attorney for Respondent.

[Endorsed]: Filed October 29, 1945. Paul P. O'Brien, Clerk.

